



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/171578

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 22, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on February 18, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$15,978.00 for the period of June 1, 2012 – October 31, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On April 24, 2012, the Petitioner submitted a change report to the agency reporting that she had been married on April 10, 2012 to [REDACTED].
3. On May 4, 2012, the Petitioner submitted a written statement to the agency that she and [REDACTED] married for legal purposes only and that [REDACTED] does not live with the Petitioner or her children and does not intend to live with them.
4. In all subsequent FS renewals, the Petitioner reported that [REDACTED] did not reside in her household.
5. The agency presented a National Comprehensive Report for [REDACTED] which included “possible addresses”, “possible utility services”, “possible driver’s licenses”, “possible vehicle registrations” and “possible liens and judgments.” The report lists its sources as “utility, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], drivers, household listing.”
6. On November 13, 2015, the agency issued a Notice of FS Overissuance and worksheets to the Petitioner and to [REDACTED] informing them that the agency intends to recover an overissuance of FS benefits in the amount of \$15,978 for the period of June, 2012 – October, 2015.
7. On January 22, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

The agency relies on information contained in the National Comprehensive Report as evidence that [REDACTED] lived with the Petitioner. The Petitioner’s representative objected to the report as hearsay. Hearsay is admissible in administrative hearings. While hearsay is admissible, the reliability and sufficiency of hearsay evidence remains an issue. For this reason, an administrative body may not establish findings of fact solely on uncorroborated hearsay. *Gehin v. Wisconsin Group Insurance Board*, 2005 WI 16, 278 Wis. 2d 111, 692 N.W.2d 572.

At the hearing, the agency’s representative testified that she is unaware of how the National Comprehensive Report information is compiled. She did not independently verify any of the information reported in the Report. There are, therefore, multiple layers of hearsay regarding the information in the report.

The agency also submitted a copy of information from CCAP on Waukesha Circuit Court Case # [REDACTED] in which [REDACTED] is named as a defendant and listed with the Petitioner’s address. In addition, the agency submitted two residential lease agreements. One lease agreement is dated October 1, 2007 and states it is an agreement between [REDACTED] (Owner) and the Petitioner and her children (Tenant) for a term of one year. The other lease agreement is dated July 14, 2006 and states it is an agreement between [REDACTED] as

“Landlord” and the Petitioner as “Tenant” for a term of one year. Further, at the hearing, the agency testified that ■■■ claims Petitioner’s children as tax dependents.

At the hearing, the Petitioner conceded that ■■■ has used her address as a mailing address but that he does not and has never lived with her. She further conceded that he stays with her 2 – 3 nights/month. She asserts that their marriage is for a variety of legal purposes but that they have never intended to live together as husband and wife.

While I find the Petitioner’s assertions about her marriage to be highly unusual, it is the agency that has the initial burden of demonstrating a proper basis for the overpayment. In this case, I do not find that the agency’s evidence that ■■■ lived with the Petitioner during the overpayment period is sufficient to meet the agency’s burden. Specifically, the National Comprehensive Report may be sufficient as the basis for starting an investigation into the issue of ■■■’s residence but it is not reliable enough by itself to establish where ■■■ was living. There are multiple layers of hearsay. The information in the report is internally inconsistent with regard to ■■■’s possible addresses at various points in time. The agency cannot verify the source of the information in the report and the agency did not independently verify the information in the report. I do not find the residential leases to be relevant evidence because they are between ■■■ and Petitioner as landlord and tenant and they are for periods of time outside the overpayment period. One CCAP record with the hearsay evidence and the irrelevant leases is not sufficient to establish where ■■■ was living during the overpayment period.

For the reasons stated above and based on the evidence presented, I conclude the agency has not met its burden of demonstrating that ■■■ lived with the Petitioner during the period of June, 2012 – October, 2015 and the agency may not recover an overissuance of FS benefits from the Petitioner for that period based on ■■■ living with the Petitioner.

### **CONCLUSIONS OF LAW**

The agency has not met its burden of demonstrating that ■■■ lived with the Petitioner during the period of June, 2012 – October, 2015 and the agency may not recover an overissuance of FS benefits from the Petitioner for that period based on ■■■ living with the Petitioner.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to rescind all overpayment claims against the Petitioner for the period of June, 2012 – October, 2015 based on ■■■ living with the Petitioner and to cease any actions to collect an overpayment from the Petitioner for those claims. These actions shall be completed within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### APPEAL TO COURT

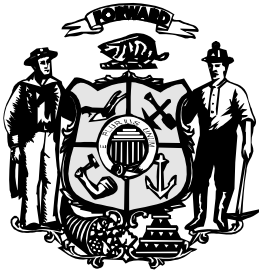
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 18th day of March, 2016

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 18, 2016.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney [REDACTED]